

Filed for intro on 02/02/95  
House Bill \_\_\_\_\_  
By \_\_\_\_\_

Senate No. SB1292  
By Person

AN ACT relative to peer assistance programs of professional societies and to amend Tennessee Code Annotated Title 62, Chapter 50.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated Title 62, Chapter 50, is amended by adding the following language as a new part 3:

Section 62-50-3\_\_.

In order to protect the health, safety, and welfare of Tennessee citizens, the General Assembly declares it to be the public policy of this state to support and encourage professional societies or associations and their related charitable foundations, made up of individuals licensed or certified under Titles 23, 49, and 63, to police their ranks for licensees or certificate holders who are impaired by alcohol, drugs, or emotional or mental illnesses. The General Assembly recognizes that professional societies and associations are in the best position to learn of licensees or certificate holders, within each respective profession, who are so impaired, and to ensure that such individuals obtain the help they need before they harm their clients', students', or patients' interests. In order to ensure that members of each respective profession

candidly, conscientiously, and objectively evaluate and review their peers' professional conduct, competence, and ability to practice or teach without impairment by drugs or mental or emotional illnesses, it is imperative that professional assistance committees be given immunity from suit.

Section 62-50-3\_\_.

As used in this section, professional assistance committee means any committee of a state or local professional trade association or society of licensees or certificate holders under Titles 23, 48, or 63, including such society's duly elected or appointed impaired peer review or assistance committees, programs, malpractice support groups, and their staff personnel and agents, or a committee of such society's related charitable or nonprofit foundation, the function of which, or one of the functions of which, is to evaluate and review their peers' professional conduct, competence, and ability to practice their licensed profession without impairment by drugs or mental or emotional illnesses.

Section 62-50-3\_\_.

All members of a duly appointed professional assistance committee formed by a professional society or association of licensees or certificate holders under Titles 23, 49, or 63, or a charitable foundation related thereto, or any employee or agent of such a committee, shall be immune from suit for any cause or action arising out of any act, omission, or proceeding undertaken or performed (including any reports made to that profession's respective regulatory board or authority, whether such report concerns ongoing advocacy for an impaired professional, or the loss of such advocacy, or the impaired professional's completion of, or breach of, an after care contract). This immunity shall also extend, without limitation, to persons designated to monitor or supervise the course of treatment or rehabilitation of an impaired professional licensed or certified, or who is eligible for license or certification, or who is training for such license or certification. The civil immunity provided under this part shall be liberally construed to accomplish the purposes of this part. The immunity from suit shall not be available, however, to a professional assistance committee or one of its members, employees, or agents,

if the putative plaintiff, in the litigation against such committee, committee member, employee, or agent, proves by clear and convincing evidence that the respective defendant acted beyond the scope of the committee's functions and also acted with knowledge of the falsity, or reckless disregard of the truth or falsity, of the matter of impairment, treatment for impairment, or the advocacy, or loss of advocacy, for the professional's reentry into active practice or professional rehabilitation.

Section 3\_\_.

Any person providing information, whether as a witness or otherwise, to a professional assistance committee regarding the competence or professional conduct of a licensee or certificate holder referenced in this part is immune from liability to any person, unless such information is false and the person providing it had actual knowledge of such falsity.

Section 3\_\_.

A member of a professional assistance committee, employee or agent of such committee, or person reporting information to such a committee, is presumed to have acted in good faith, and without negligence, recklessness, or malice. Any person alleging lack of good faith, or that a person acted with malice or gross negligence, has the burden to prove such conduct or omissions by clear and convincing evidence.

Section 3\_\_.

In the event that any individual files suit against any professional assistance committee contemplated under this part, or any member, employee, or agent of such committee, or person or entity reporting to such committee, then that individual or entity shall bear the costs of such defendant committee's or individual defendant's litigation and attorneys fees, if that plaintiff fails to prevail in the litigation with a final judgment in the plaintiff's favor, or if the court determines on motion or otherwise that the plaintiff's claim was frivolous, unreasonable, without foundation, or brought in bad faith.

Section 3\_\_.

The records, proceedings, and all communications of any professional assistance committee shall be deemed confidential and privileged, and shall not be available for either court, regulatory board, or administrative agency subpoena. This provision shall not prevent the subpoena of business records which are otherwise available through subpoena. Such records are not to be construed as privileged merely because they have been provided to a professional assistance committee.

SECTION 2. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 3. This Act shall take effect on becoming a law, the public welfare requiring it.